Per Curiam

SUPREME COURT OF THE UNITED STATES

JEFFREY JEROME SALINAS *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 05–8400. Decided April 24, 2006

PER CURIAM.

The petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit and the motion of petitioner for leave to proceed *in forma pauperis* are granted. The judgment is vacated, and the case is remanded to the Fifth Circuit for further consideration.

The Fifth Circuit concluded that petitioner's prior conviction for simple possession of a controlled substance constituted a "controlled substance offense" for purposes of United States Sentencing Commission, Guidelines Manual §4B1.1(a) (2003). The term "controlled substance offense" is defined in pertinent part, however, as "an offense under federal or state law . . . that prohibits . . . the possession of a controlled substance (or a counterfeit substance) *with intent to manufacture, import, export, distribute, or dispense.*" §4B1.2(b) (emphasis added). Accordingly, the Fifth Circuit erred in treating petitioner's conviction for simple possession as a "controlled substance offense." The Solicitor General acknowledges that the Fifth Circuit incorrectly ruled for the United States on this ground. Brief in Opposition 8–9.